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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/606,314 | 06/29/00 | FIKE | R 0942.4290005 |

HM22/0813
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| EXAMINER |
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FLOOD, M

| ART UNIT | PAPER NUMBER |
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1651

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DATE MAILED:

08/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/606,314

Applicant(s)

Fike et al.

Examiner

Michele Flood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 29, 2000
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-37, 39-55, and 60-72 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 27-37, 39-55, and 60-72 are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendments filed on September 5, 2000. Acknowledgment is made of the cancellation of Claims 1-26, 38, 56-59 and 73-91, and the claims are withdrawn from further consideration.

Election/Restriction

- I. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 27-36, ~~70~~ and 72, drawn to a nutritive medium powder, classified in class 435, subclass 243, for example.
 - II. Claims 37, 39-41, 44-47, 60-70 and 72, drawn to a nutritive medium supplement powder, classified in class 435, subclass 235 or class 435, subclass 325 or class 435, subclass 410 or class 435, subclass 255.21 or class 435, subclass 254.2, for example.
 - III. Claims 42-43, 70 and 72, drawn to a buffer powder, classified in a class and a subclass, which defines the particular buffer powder component or components, i.e., the buffer salt contained therein, such as, 430, subclass 486 or class 430, subclass 492 or class 430, subclass 493, for example.
 - IV. Claims 48-55, drawn to a method of using a nutritive medium powder, classified in class 435, subclass 254.1 or class 435, subclass 256.8, for example.

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- V. Claim 71, drawn to a kit for use in the cultivation of a cell, said kit comprising one more containers wherein a first container contains a powder, and one or more additional containers containing one or more cells, classified in class 435, subclass 810.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I-III and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions, all have different end products, and thus are distinct inventions.

3. Inventions I-III, V and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process can be practiced with four different materially different products as evident by the claims themselves.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. Because these inventions are distinct for the reasons given above and the search required for one Group is not required for another Group, restriction for examination purposes as indicated is proper.

5. This application contains claims directed to numerous distinct species of powders, said species containing numerous permutations of numerous ingredients, which can be prepared by several different methods of making. See claims 27-72.

If applicant elects group I set forth above, applicant is **also** required under 35 U.S.C. 121 to elect a **single** disclosed species of method of making a nutritive medium powder (i.e., agglomerating, spray-drying, or agglomerating and spray-drying), and a **single** disclosed type of buffer, **specifically stating the method of making and type of solvent, buffer and/or liquid nutritive medium used in the making of a nutritive medium powder**, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

If applicant elects group II set forth above, applicant is **also** required under 35 U.S.C. 121 to elect a **single** disclosed species of method of making a nutritive medium supplement powder and/or nutritive medium subgroup (i.e., agglomerating, spray-drying, or agglomerating and spray-drying), and a **single** disclosed type of supplement, type of subgroup, and type of buffer, **specifically stating the method of making, type of supplement, type of subgroup and type of buffer and/or liquid nutritive medium used in the making of a nutritive medium supplement powder and/or a nutritive medium subgroup** for prosecution on the merits to

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which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

If applicant elects group III set forth above, applicant is **also** required under 35 U.S.C. 121 to elect a **single** disclosed species of method of making a buffer powder (i.e., agglomerating, spray-drying, or agglomerating and spray-drying), **specifically stating the method of making a buffer powder** for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

If applicant elects group IV set forth above, applicant is **also** required under 35 U.S.C. 121 to elect a **single** disclosed species of cell type, **specifically stating the cell type used in the method of culturing a cell**, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

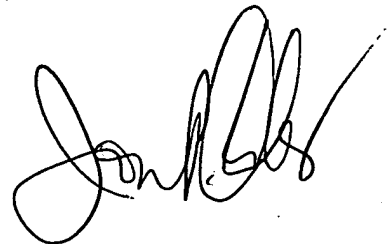
6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is (703) 308-9432.

MCF

August 10, 2001

A handwritten signature in black ink, appearing to read 'Jon P. Weber', with a stylized, cursive script.

Jon P. Weber, Ph.D.
Primary Examiner